

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

EDDIE YARBROUGH,
Petitioner,
v.
DAVID VAUGHN, Warden,
Respondent.

Case No. CV 17-425 BRO (MRW)

**ORDER DISMISSING ACTION
WITHOUT PREJUDICE**

The Court summarily dismisses Petitioner's defective state habeas action.

* * *

Petitioner, an inmate at the state prison in Sacramento, filed a request for an extension so that he can complete and file a habeas petition challenging his criminal conviction. Attached to his letter were the first and last pages of a form habeas petition. (Docket # 1.)

Petitioner does not have an active case on file in this district. Indeed, his filing is apparently an attempt to extend the deadline to file a future habeas action. This procedure does not comply with the rules of this Court, so Petitioner's action must be dismissed.

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Petitioner has not filed an actual habeas petition, nor has he filed any other materials with this Court in connection with his case. According to the motion, the state supreme court denied review on his appeal in January 2016 (confirmed by review of the state appellate court system's website). However, Petitioner's submission is not accompanied by any information regarding his criminal case or the claims of error he wishes to assert on habeas review.

As a result, Petitioner failed to comply with the Rules Governing Section 2254 Cases in the United States District Courts. Rule 2(d) expressly requires that a state prisoner commence a habeas action by using a standard form prepared by the Court. In our district, prisoners must complete Form CV-69. That form provides the Court with basic information about the petitioner, his conviction, the prior status of his case in state and federal court, and, most importantly, the federal constitutional claims he wishes to pursue here.

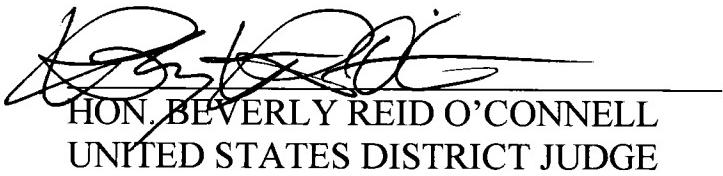
A state prisoner must begin his case by filing a petition for a writ of habeas corpus. Petitioner’s request for an extension to file his federal habeas petition – in the absence of a properly filed petition – is inadequate and premature. If he files an action after the statutory deadline, Petitioner may be entitled to request equitable tolling of the limitations period.¹ However, at this stage, the Court cannot extend the habeas filing period as Petitioner requests.

¹ The Court observes that a state prisoner generally has a one-year period after a conviction becomes final (generally, after the conclusion of all appellate proceedings) to commence an action for federal habeas review. 28 U.S.C. § 2244. In California, when a prisoner does not seek certiorari review of a conviction in the U.S. Supreme Court, a prisoner's conviction generally becomes final 90 days after the state supreme court denies a petition for review. Shannon v. Newland, 410 F.3d 1083, 1086 (9th Cir. 2005). Because the state supreme court denied review on January 13, 2016, Petitioner likely has until early April 2017 to file a timely action.

1 Therefore, this action is DISMISSED without prejudice. For Petitioner's
2 convenience, the Clerk is directed to send him another blank Form CV-69 with a
3 copy of this Order.

4 IT IS SO ORDERED.
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7 Dated: 1-26-17



HON. BEVERLY REID O'CONNELL
UNITED STATES DISTRICT JUDGE

10 Presented by:
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14 HON. MICHAEL R. WILNER
15 UNITED STATES MAGISTRATE JUDGE
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